



ЦЕНТАР ЗА ПРАВНИ  
ИСТРАЖУВАЊА И АНАЛИЗИ ■  
CENTER FOR LEGAL RESEARCH AND ANALYSIS

Roma  
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Association



# ANALYSIS

of the status of Roma as defendants in criminal  
proceedings in the Republic of Macedonia

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# LIST OF ABBREVIATIONS

European Convention on Human Rights	ECHR
European Court of Human Rights	ECtHR
European Council	EC
United Nations High Commissioner for Refugees	UNHCR
Lesbian, Gay, Bisexual, Transgender and Intersex People	LGBTI
Ministry of Labour and Social Policy	MLSP
United Nations	UN
Basic Courts	BC
Basic Public Prosecution	BPP
Republic of Macedonia	RM
Official Gazette of the Republic of Macedonia	OG
United States of America	USA
Social Work Centres	SWC
Centre for Legal Research and Analyses	CLRA
United Nations Children's Fund	UNICEF

# EXECUTIVE SUMMARY

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Discrimination on the basis of ethnic origin is discernible in the Republic of Macedonia, especially in the case of the Roma population. Discriminatory practices are observed in several areas and they necessitate continuous efforts aimed at acceptance of differences, integration of Roma citizens in all social spheres, greater care and inclusiveness of Roma children in the education process, provision of adequate health care, work on improving their social and economic status and mitigation of consequences arising from several risk factors that contribute to underprivileged status of Roma citizens. Discrimination, marginalization, unequal treatment and unequal access to justice are all topics that raise serious concerns, especially in the case of the Roma community.

Access to justice, i.e. the right to fair and just trial emerges as important issue affecting the Roma population, having in mind the overall social and economic context of Roma in the Republic of Macedonia. Protection of fundamental human rights in court proceedings and, in particular, the status of Roma as defendants in criminal proceedings, combined with the general context and atmosphere of stigmatization and stereotyping, is an important issue that deserves to be researched in order to identify efficient protection mechanisms.

Particular concerns are raised with the situation of Roma children, especially those who are not enlisted in general records and do not possess necessary personal identification documents, are involved in panhandling, have the status of street children, are not included in the education process which results in high level of illiteracy, lack of knowledge and skills, as well as children who grow up without necessary parental care, are forced to change place of residence, use alcohol and illegal substances that leads to addiction diseases, etc.

Institutions' discriminatory treatment of Roma has been duly noted in several reports of international and domestic organizations and bodies monitoring human rights of marginalized groups. Particularly worrying is the fact that certain discriminatory policies and practices, although duly noted and assessed as contrary to fundamental human rights and freedoms, have been repeated in reports from several years. This leads to the tendency of insensitivity to differences in society and to the needs of Roma, which further deepens the gap in various spheres of social life.

Special attention should be paid to the status of Roma in the judiciary system, in the broadest sense of this word. There are numerous observations on discrimination against Roma in police proceedings, excessive use of force, intimidation, repression and inhuman treatment, as well as manifested distrust in statements made by members of the Roma community indicating that their rights have been threatened or violated.

Efforts are needed to sensitize judges and public prosecutors about the need for equitable and non-discriminatory treatment of Roma in the judiciary system, and training on human rights and adequate treatment for the police, in order to ensure higher level of security for the Roma ethnic community in the Macedonian society.

Judgements on inhumane and degrading treatment taken by the European Court of Human Rights in Strasbourg against the Republic of Macedonia, as well as numerous activities, reports and indications made by civil society organizations are indicative of gross negligence on the part of public prosecution offices to conduct effective investigation upon allegations made by citizens of Roma ethnic nationality about being subjected to police ill-treatment.

Analysis of the status of Roma in court proceedings relied on several methodology tools: analysis of court rulings, interviews with representatives of non-governmental organizations that work in the field of Roma rights, and interviews with attorneys who represented Roma in court proceedings.

Analysis of court rulings did not allow establishment of discrimination against Roma when they appear as offenders or victims of crimes, both in terms of exercise of procedural remedies and motions and in terms of issuance of stricter criminal sanctions.

However, it can be concluded that discrimination, in the broadest sense, is not excluded when it comes to inefficiency in utilization of all procedural remedies and motions available to Roma in the course of proceedings. Due to lack of knowledge, large number of Roma defendants does not have defence attorneys in criminal proceedings and even in the cases when defence attorneys have been involved they were engaged by the non-governmental sector or were appointed as state-mandated ex-officio attorneys, which opens space for doubts in effectiveness of defence services provided to Roma.

The analysis of court rulings allowed definition of several characteristic related to the profile of criminal offenders who are member of the Roma community: male, illiterate or with completed primary education, without property or poor property status, unemployed, and married with three children. As regards criminal offences they have perpetrated, it could be said that most common are crimes against property, committed by single offender; specific recidivism, while the most common convictions include probation sentences (for thefts) or imprisonment sentences (for aggravated thefts).

<sup>1</sup> <http://mhc.org.mk/pages/reports#.WbuCicgjGUk>  
[http://ombudsman.mk/MK/godishni\\_izvestiai.aspx](http://ombudsman.mk/MK/godishni_izvestiai.aspx)  
Macedonia, Country Reports on Human Rights Practices for 2011, United States Department of State, Bureau of Democracy, Human Rights and Labor  
Macedonia 2016 Human Rights Report, U.S. State Department  
[https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf)

<sup>2</sup> <http://www.jpacademy.gov.mk/upload/materijali%202017/lzbrani%20presudi%20na%20ESCP%20protiv%20RM%20za%20povreda%20na%20cl.3.pdf>



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In the case of Roma citizens appearing as victims of crimes, it can be concluded that they are female and are often victims of crimes perpetrated under circumstances of domestic violence.

Based on analysis findings presented in this document, it can be unequivocally concluded that possible discriminatory practices in the course of court proceedings related to the procedural position of Roma could be identified by means of direct monitoring and assessment of court procedures in which Roma appear as defendants or victims of crimes, and especially by monitoring the performance of law enforcement authorities, primarily the police and the public prosecution offices.

# I. I. INTRODUCTION

Discrimination, marginalization, unequal treatment and unequal access to justice are still acute issues and raise concerns in the Republic of Macedonia, especially when it comes to members of the Roma community. In spite of constitutional and international guarantees for equality and non-discrimination of all individuals in the society, we witness unequal treatment in exercise of rights by certain ethnic groups in front of institutions and judicial bodies, including discrimination, marginalization, segregation, violation of fundamental human rights and freedoms.

Members of the Roma community are among the most marginalized and the most discriminated groups in Macedonia, in all social spheres: education, housing, employment, health care, social insurance. Roma are facing unequal treatment in access to justice, irrespective of the particular right they are trying to protect or exercise. Such status of the Roma community is duly noted in numerous analyses and reports developed by domestic, but also international organizations and institutions.

The principle of equality and prohibition of discrimination are basic rights guaranteed to all humans. They are included in all relevant international treaties on human rights: Universal Declaration of Human Rights (Art. 1 and Art. 2); International Covenant on Civil and Political Rights (Art. 2 and Art. 26); International Covenant on Economic, Social and Cultural Rights (Art. 2); International Convention on the Elimination of All Forms of Racial Discrimination, etc. In the context of international law, special attention should be paid to Article 14 of the European Convention on Human Rights, which stipulates that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground, such as sex, race, colour, language, religion, political or any other opinion, national or social origin, association with national minority, property, birth or other status.

According to the European Court of Human Rights (ECtHR),<sup>3</sup> although Article 14 does not exist independently from other rights and freedoms guaranteed under the European Convention, a measure which in itself was in conformity with requirements of the article enshrining the right or the freedom in question may infringe that article when read in conjunction with Article 14 for the reason that it is of discriminatory nature („In cases against Belgium relating to certain aspects of the laws on the use of languages in education in Belgium, applications no. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64). In addition to Article 14 of the Convention, particular importance is given to Article 1 of the Protocol no. 12, which establishes general prohibition of discrimination. Namely, the Convention

<sup>3</sup> European Court of Human Rights, <http://www.echr.coe.int/Pages/home.aspx?p=home>

covers direct discrimination which can be defined as unwanted or harmful treatment of an individual or a group on the basis of prohibited characteristics or grounds. Indirect discrimination occurs when due to certain actions an individual or a group has suffered unproportioned consequences, i.e. where apparently neutral provisions, criteria or practices have disproportionate effects on certain groups.

According to the definition enlisted in the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>4</sup> racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Republic of Macedonia has developed documents<sup>5</sup> aimed to improve the status of Roma in the society, but their implementation is inadequate and their success is limited, which prevents these strategic documents to yield the desired results. Having in mind the fact that the judiciary system in any state that is based on the principles of rule of law and power-sharing is entrusted with powers on protecting exercise/enjoyment of individual freedoms and human rights, and having in mind the serious problems faced by the Roma community, development of this analysis emerged as necessary in order to obtain clear image about the status of Roma citizens in front of the judicial authorities.

In particular, there are no research studies conducted in the Republic of Macedonia to establish the status of Roma in front of the judicial authorities, while the practice is abounding in examples of unequal treatment and discrimination against members of the Roma community, development of this analysis was considered necessary with a view to demonstrate the status of Roma in front of the judicial authorities and to offer arguments that would allow development of conclusions and recommendations aimed to improve the identified situation.

<sup>4</sup> International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by the UN General Assembly Resolution no. 2106A(XX) of 21 December 1965, entry into force on 4 January 1969.

<sup>5</sup> National Strategy on Roma in the Republic of Macedonia 2014-2020; National Action Plan on Education 2016–2020; National Action Plan on Health 2015–2020; National Action Plan on Employment 2016–2020; National Action Plan on Housing 2016–2020; National Action Plan on Strengthening the Status of Roma Women in the Society 2016–2020, Operational Plan on Education 2005–2014; Operational Plan on Health 2005–2014, Operational Plan on Employment 2005–2014; Operational Plan on Housing 2005–2014; National Action Plan on Improving the Social Status of Roma Women in the Republic of Macedonia (2011–2013); and a series of other strategic documents, available at: <http://www.mtsp.gov.mk/dokumenti-642e295b-69e3-4291-acb1-2ce6beb8cdd8.nsp>;

## II. METHODOLOGY FRAMEWORK

The Centre for Legal Research and Analysis (CLRA) contracted two external experts to work on this analysis, in coordination with CLRA's project coordinator and assistant, and with the partner organization Roma Lawyers Association that works on improving the status of and the access to justice for Roma citizens.

In particular, the research team was tasked with collection of data necessary for development of this analysis. In that context, external experts were tasked to develop the analysis on the basis of data collected and imputed into database, to draft conclusions and recommendations in their respective field of expertise, with the ultimate goal of presenting comprehensive image about the status of Roma in the judiciary system in the Republic of Macedonia.

Data collection was pursued according to previously developed methodology and implied application of quantitative and qualitative research methods and previously agreed methodology on data collection, data processing and compilation of adequate database.

In that, the project team applied methods for which it was assessed that they will provide the most efficient and the best results in development of argument-based analysis.

The research methodology included following techniques for data collection and processing:

- use of the instrument on freedom of information, in compliance with to the Law on Free Access to Public Information;
- analysis of 144 rulings taken by four criminal courts in the Republic of Macedonia, those being: Basic Court Skopje I - Skopje, Basic Court Kumanovo, Basis Court Bitola, and Basic Court Shtip;
- interviews with two experts who work on promotion of the status of Roma;
- interviews with six attorneys who represent Roma in criminal proceedings;
- interviews with four representatives of Roma NGOs that work on improving access to justice for Roma;
- overview of strategic documents related to the status of Roma in the Republic of Macedonia;
- analysis of the international law related to discrimination and the status of Roma;

- analysis of the domestic legislation related to discrimination and the status of Roma;
- case studies;
- drafting conclusions and recommendations.

## **Analysis Goals**

This analysis aims to offer arguments that would allow conclusions about the treatment of Roma in criminal proceedings led before the courts, the status of Roma when they appear as victims of crimes, the status of Roma children in the judicial system, etc. In that, the analysis has special focus on the penal policy, i.e. type and amount/duration of sanctions/fines in correlation with criminal offences, procedural remedies and the possibility of Roma to utilize procedural remedies guaranteed by the Law on Criminal Proceedings to all defendants, i.e. victims of crimes. Albeit in limited terms, the analysis also addresses issues related to access to justice and police treatment of citizens of the Roma nationality.

This legal analysis is intended to sensitize judges and public prosecutors about the need for equal and non-discriminatory treatment of Roma in the judiciary system and about the need for capacity building of young law students for their effective involvement in addressing anti-Roma rhetoric, hate speech and hate crimes, as well as integration of Roma in the judicial bodies.

# III. ANALYSIS JUSTIFICATION

## I. Strategic documents on Roma inclusion in the Republic of Macedonia

### *1.1. Strategy on Intensified Local Inclusion of Roma in the Social Welfare System of the Republic of Macedonia 2012–2014, Ministry of Labour and Social Policy, Skopje 2011*

This strategic document was intended to contribute to attainment of results/improvements in several areas:

- reduced number of materially unsecured Roma families;
- capacity building of social welfare institutions for better targeting of socially underprivileged groups (including Roma) and for improved quality of services;
- expanded network of non-institutional forms for protection;
- better information for the Roma community about exercise of their rights and obligations in the field of social welfare;
- reduced number of Roma street children;
- reduced number of early marriages in the Roma community;
- reduced number of unregistered Roma who due to lack of necessary personal identification documents are unable to exercise their rights in the field of social welfare.

The state is insufficiently successful in attainment of goals and priorities defined under this strategy. That became evident from the US Department of State 2015 Macedonia Report on Human Rights Practices.<sup>6</sup> In particular, this report underlines lack of sufficient funds to produce significant results, especially in health care.

### *1.2. National Strategy on Roma 2014–2020, Ministry of Labour and Social Policy in cooperation with the National Coordinator for the Roma Decade and Strategy, June 2014*

The section enlisting strategic commitments assumed under this Strategy includes:

1. To improve conditions and employment possibilities, and to reduce unemployment among Roma people, by integrating them in all mainstream activities in the Republic of Macedonia;
2. To improve education level of the Roma community;
3. To reduce the gap in terms of quality of housing between Roma and non-Roma communities in the Republic of Macedonia;

<sup>6</sup> <https://www.state.gov/documents/organization/253085.pdf>

4. To continuously improve the health status of the Roma community in the Republic of Macedonia;
5. To develop and promote the Roma culture, language and tradition.

Social exclusion is the process whereby certain persons are pushed towards the margins of society and are prevented to fully participate in all social spheres, due to their poverty, lack of basic qualifications and possibilities for life-long learning, or discrimination. This process distances affected people from possibilities for employment, earning salaries, education and training, as well as from societal networks and activities. Socially-excluded persons have limited or insignificant access to competent decision-making bodies and institutions, which makes them feel powerless to influence decisions that affect their lives.

Social inclusion is the process whereby persons under social risk and exclusion are guaranteed possibilities and resources necessary for their full participation in economic, social and cultural life, as well as for attainment of decent, acceptable level of living standard and wellbeing. This process allows them to exert essential influence on decisions that affect their lives and facilitates their enjoyment of fundamental rights and freedoms.

The new Strategy is focused on the following areas:

- employment;
- education;
- housing;
- health care; and
- culture.

## **2. International documents on human rights and the status of Roma**

- Universal Declaration of Human Rights, 1948
- Convention on the Elimination of All Forms of Discrimination Against Women, 1979
- Universal Declaration on Cultural Diversity, 2 November 2001
- Western Balkans Declaration on Social Security
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Rights of the Child
- European Convention on the Exercise of Children's Rights (ETS 160)
- European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children (ETS 105)

- European Convention on the Legal Status of Children Born Out of Wedlock (ETS 085)
- European Convention on the Adoption of Children (ETS 058)
- European Social Charter (ETS 035)
- Framework Convention for the Protection of National Minorities, 1997
- Protocol Relating to the Status of Refugees
- Convention Relating to the Status of Stateless Persons
- Convention Relating to the Status of Refugees
- Charter of Fundamental Rights of the European Union (2000/C 364/01)
- Council Directive implementing the principle of equal treatment between persons irrespective of racial and ethnic origin, 2000/43/EC
- European Council Conclusions of 14th December 2007, 16616/1/07 REV 1
- Council Conclusions on Inclusion of the Roma of 28th May 2009, 9 10394/09
- Council Conclusions on Advancing Roma Inclusion of 27th May 2010
- Council Conclusions on the EU Framework for National Roma Integration Strategies by 2020
- Recommendation on Improving the Housing Conditions of Roma and Travelers in Europe, Rec(2005)4
- Recommendation of the Committee of Ministers on Better Access to Health Care for Roma and Travelers in Europe, Rec(2006)10
- Recommendation on Policies for Roma and/or Travelers in Europe, Rec(2008)5

### **3. Domestic legislation on protection against discrimination**

- Declaration on Promotion of the Status and Rights of Roma, "Official Gazette of the Republic of Macedonia" no. 42/11
- Law on Promotion and Protection of the Rights of Members of Communities Accounting for Less Than 20% of the Total Population in the Republic of Macedonia, "Official Gazette of the Republic of Macedonia" no. 92/08, 42/14
- Law on Prevention and Protection Against Discrimination, "Official Gazette of the Republic of Macedonia" no. 50/10
- Law on Local Self-Government, "Official Gazette of the Republic of Macedonia" no. 5/02
- Law on Protection of Children, "Official Gazette of the Republic of Macedonia" no. 23/13, 12/14



## **4. Roma human rights according to reports from international and domestic organizations**

### ***4.1.2011 Country Report on Human Rights Practices for the Republic of Macedonia, U.S. Department of State<sup>7</sup>***

This report has noted situations that concern societal discrimination of Roma, but also of other ethnic and religious minorities, which raised concerns about human rights practices in the country.

Moreover, it was observed that many citizens of Macedonia, mostly Roma, were denied exit from the Republic of Macedonia on the basis of being potential asylum seekers in the EU.

Roma complained of widespread societal discrimination. The civil society and international experts reported that employers often denied job opportunities to Roma, while some Roma complained of lack of access to social welfare funds.

A major problem is identified in the fact that many Roma lack personal identification documents, which are necessary to obtain access to government services, such as education, social welfare and health care.

### ***4.2. 2016 Country Report on Human Rights Practices for the Republic of Macedonia,<sup>8</sup> U.S. Department of State***

Problems identified in regard to human rights include:

- physical mistreatment of detainees and prisoners by police and prison guards;
- poor conditions and overcrowding in some of the country's prisons and mental institutions;
- delayed access to legal counsel by detainees and defendants;
- restrictions on the ability of Roma to leave the country and to access constitutionally mandated healthcare services, particularly gynaecological services;
- restrictions on access to asylum;
- decreased prevention and protection of victims of trafficking in persons;
- domestic violence against women and children;
- discrimination against persons with disabilities;
- institutional and societal discrimination against Roma and other ethnic minorities and against LGBTI population;
- child labour, including forced begging.

<sup>7</sup> Macedonia, 2011 Country Report on Human Rights Practices, U.S. Department of State, Bureau of Democracy, Human Rights and Labour

<sup>8</sup> 2016 Country Report on Human Rights Practices, U.S. Department of State

During the year, the Ombudsman and civil society organizations received several complaints, especially from Roma people, that state authorities denied their freedom of movement solely based on their ethnic, racial and/or religious affiliation. However, the number of complaints was lower compared to the previous years.

Border authorities have denied exit from the country to number of people, mostly Roma, on the grounds of suspicions that they would seek asylum in the EU. In early November, the Minister of Interior acknowledged there were 41 cases before the courts alleging discrimination against Roma. Subsequent directives have been issued to competent authorities to stop practices on limiting freedom of movement for Roma citizens at border crossings.

**Stateless persons:** As regards stateless persons (apatrides), the UN Refugee Agency (UNHCR) reported that, by June, there were 61 stateless persons in the country. UNHCR worked with competent authorities to resolve the situation of additional 273 persons, primarily Roma, who lacked civil registration and documents.

**Reproductive rights:** Roma women have the least access to family planning counselling, access to gynaecological services due to the fact that many of them lack identity cards and are unable to obtain access to government services in the field of health care.

**Discrimination:** Roma women do not have equal opportunities for employment and education due to traditional and religious restrictions and their role in society. In certain Roma communities, there are widespread practices of men directing the voting of women or even voting on their behalf.

**Birth registration:** Some Roma families delayed registration of newborns in the general records, whereby children without birth certificates are prevented equal access to education, health care and other benefits later in life.

**Early and forced marriages:** Early and forced marriages occur in the Roma community. It is difficult to estimate the number of early and forced marriages, because they are rarely registered.

The state needs to develop plans aimed to improve social inclusion of Roma, including measures to prevent early marriage, mandatory secondary education, special social and community-based services, school counselling and outreach, and improved access to basic health services.

Roma people do not have possibilities to attend secondary education in their mother tongue due to lack of Roma teachers.

The report indicates to widespread societal discrimination against Roma. The civil society and international experts reported that employers deny job opportunities to Roma, while some Roma complained of lack of access to public services and benefits.

Roma children are overrepresented at segregated special schools for students with intellectual disabilities.

**Prohibition of forced labour:** Frequent cases have been observed of Roma children being forced to beg by their close relatives. Roma children are exploited and work with their parents.

#### **4.3. Assessment of Juvenile Justice Reform Achievements in the Republic of Macedonia<sup>9</sup>**

Concerns identified under this report include the weakness of secondary prevention and lack of prevention and rehabilitation efforts that take into account special needs of the Roma community, which is greatly over-represented at juvenile correctional facilities compared to children from other ethnic communities.

Disproportional number of Roma children involved in committing criminal offences highlights the urgent need for prevention programs adapted to the needs of the Roma community, and more generally, the need for social inclusion policies. The Ministry of Labour and Social Policy's programs for socially excluded people do not identify Roma as their target group. At the moment, only programs intended for the Roma community are those implemented by non-governmental organizations, but they are marked by limited capacity. Therefore, non-governmental and community-based organizations need greater support.

Street children and their families, homeless persons, victims of domestic violence and drug users should be defined as special target groups.

Many of the prisoners serving sentences for crimes against property are Roma. Special problem is identified in the fact that prison facilities do not employ Roma staff. Only two Roma are employed in the overall prison system. Another related problem is lack of Roma staff in programs and policies aimed at rehabilitation of Roma prisoners. Although Roma people represent around 2.6 percent of the overall population in the country, they account for almost 50 percent of the population at juvenile correction facilities. Employees at these facilities recognized special challenges in prevention of recidivism among Roma, but they lack coherent approach about what might be done to meet their special needs.

<sup>9</sup> Assessment of Juvenile Justice Reform Achievements in the Former Yugoslav Republic of Macedonia, UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States, October 2010

**Prevention:** Schools do not have policies or programs designed to identify children at risk of offending and provide them adequate assistance. There are no programs on prevention of delinquency specifically designed to meet the needs of the Roma community. Certain day-centres are in place to assist Roma children at risk and underage offenders.

***4.4. Abandoned and Branded; Analysis of the Situation Related to Sexual Abuse of Children, main researchers Violeta Chacheva and Stojanka Mircheva, UNICEF Office, Skopje 2010***

This research showed that although children from all ethnic communities in the country are at risk, Roma children are the most vulnerable to sexual abuse. Reasons thereof are complex and include various family and societal structures and status of different ethnic communities, their access to services, and the perceptions of those providing child protection.

In this study, areas which the researchers indicated need for further investigation and inquiry include Roma traditions as possible risk factor for sexual abuse of children.

In order to make the child protection system effective, recognition of abuse and negligence should lead to adequate assistance and support for the child and the family. All sexually abused children should have access to counselling and support services at social works centres, for them and for members of their families. All services should be gender sensitive and should take into account specific characteristics of the vulnerable groups. In that regard, special attention should be paid to the Roma community.

The research showed that Roma children are most vulnerable to sexual abuse. Although children from the Roma community participate with only 3% in the total population of children in the country, their share in the population of sexually abused victims is second in frequency, accounting for 23% of the total number of children registered as victims of sexual abuse. Such disparity between share of Roma children in total children population and their frequency among children registered as victims of sexual abuse is statistically high and important.

The analysis according to ethnic nationality of persons convicted of sexual abuse of children showed that 24% of them are Roma, which is significantly higher compared to the share of Roma in the total population in the Republic of Macedonia (2.7 %).

#### **4.5.2015 Report for the Republic of Macedonia, European Commission, Brussels, 10.11.2015, SWD(2015) 212 final**

General weaknesses in the implementation of human rights standards affect the most vulnerable and the most marginalized groups in society, including children and juveniles, disabled persons, and Roma.

Although policy measures are taken to promote social inclusion, poverty remains a serious problem, in particular for Roma.

Measures under the national strategy against poverty have limited impact and poverty levels remain high, especially among Roma.

The new Roma Strategy was adopted and covers the period 2015–2020. The Ministry of Labour and Social Policy's department tasked with implementing Roma policy was strengthened. The Roma Seminars were regularly held, but their conclusions were not comprehensively followed up and coordination among institutions is still weak. A number of government projects on social housing, education, employment and social assistance produced good results. Roma Health Mediators are functioning in six municipalities. The project on inclusion of people in the birth registers has registered 120 of 550 identified people thus far.

Nevertheless, the most disadvantaged Roma are still facing problems in accessing social benefits due to their lack of administrative documents. Hardly any progress is observed in terms of political representation, media coverage in Roma language, and the status of Roma language in municipalities with majority Roma population.

Roma have limited economic opportunities. Poverty remains the biggest factor behind the low share of Roma children in education. There continues to be a disproportionate number of Roma children placed in special needs schools. Segregation, stereotyping and other forms of discrimination remain prevalent. Complaints have been registered by Roma prevented to leave the country and of mistreatment of Roma who have returned after unsuccessfully seeking asylum abroad.

Roma refugees and internally displaced persons continue to live in substandard conditions and their access to education, housing, health care and employment, remains a concern. Number of active Roma NGOs is declining because less funding is available.

#### ***4.6. Report on Exercise of the Rights of Children in the Republic of Macedonia, Macedonian Coalition of Non-Governmental Organizations on the Rights of Children***

Findings presented in this report provide the conclusion on low involvement of Roma children in the general education process. In that, the highest number of Roma children is attending primary education and they account for 14%, the share of Roma children attending preschool education accounts for 5%, while their share in secondary education represents only 3%.

These percentages allow the conclusion, as given in the report, that Roma parents do not have developed awareness about the importance of preschool education or the importance of secondary education. According to the report's authors, this situation could be due to lack of basic conditions for subsistence, while in the case of secondary education reasons also include early marriages.

#### ***4.7. 2015 Annual Report of the State Council for Prevention of Children Delinquency***

2015 Annual Report of the State Council for Prevention of Children Delinquency provides insights about the importance and role played by the Day-Centre for Street Children, whose target group are Roma children.

This centre works with vulnerable groups of children and their families, in their immediate living and social environment. Target group of the day-centre are Roma street children in the Municipality of Shuto Orizari. These are children from Roma families with multiple children aged 4 to 17 years, who are not involved in the education system, and mainly spent their time on the streets, begging or working at crossroads, and who live in extremely unfavourable housing and financial conditions. Its work is focused on primary prevention, whereby the day-centre addresses basic reasons or factors before children engage in juvenile delinquency, in order to create protective environment for all children. The day-centre is part of the contemporary system on care and protection of children, i.e. social welfare facility embedded in their place of residence. Overall goal pursued under the work program implemented by the day-centre for street children concerns social integration and discontinuation of the cycle of children's marginalization, i.e. removing these children from the streets and integrating them in the mainstream society.

#### **4.8. Research Report on the Phenomena of Sexual Abuse and Sexual Exploitation of Children, Department on Protection of the Rights of Children at the Ombudsman Office, September 2012**

Based on responses obtained from the police, the public prosecution and the judges, this research report established that according to the ethnic nationality of children victims, majority of them are Macedonians and Roma.

According to insights provided by SWCs, victims of sexual abuse are usually children with physiological, educational and upbringing negligence or children without parental care, street children, as well as children living in poor social and economic conditions or children from dysfunctional families or whose parents have low education level. According to answers provided by some SWCs, victims are also children with prior sexual experience, who have subjected to sexual exploitation or have been exposed to domestic violence.

At the same time, this report raises concerns about the fact that majority of street children are members of the Roma ethnic community.

Among recommendations made by civil society organizations and included in the abovenamed report, two recommendations are of special importance:

- the state should develop special programs to address social risks of especially vulnerable groups among the Roma population;
- research is needed to obtain solid empirical basis to determine the principles and the factors contributing to special vulnerability of the Roma population, followed by organization of awareness campaigns among the Roma population about this phenomenon.

The section from this research report containing general recommendations underlines the need of special and adequate measures to assist and protect Roma children that most often appear as victims of sexual abuse and sexual exploitation.

# IV. BRIEF OVERVIEW OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGEMENTS AGAINST THE REPUBLIC OF MACEDONIA IN REGARD TO FAILURE TO CONDUCT EFFECTIVE INVESTIGATION

## Ineffective investigation by the prosecution offices

In the last three years, civil society organizations<sup>10</sup> have registered a number of cases in the Republic of Macedonia in which the public prosecution offices failed to conduct effective investigation or in which the state has failed to provide adequate indemnity, some of which involve members of the Roma community:

- one citizen was brutally attacked by the police on the streets in Ohrid;
- one prisoner lost a kidney and his spleen after being attacked by a prison guard;
- the police raided the Roma community in settlement "Topaana";
- young man was battered at the police station in Demir Hisar;
- underage Roma children were battered by the special police unit "Alpha";
- one young boy was restrained with rope after being erroneously accommodated at the institution for persons with physical disabilities, etc.

There are no convictions with effective imprisonment sentence taken for the criminal offence torture or other cruel, inhuman or degrading treatment and punishment. Eight court rulings have been taken whereby the offenders were issued alternative measure, i.e. probation sentences.

Only one court ruling was taken against the criminal offence ill-treatment while performing an official duty, and it implied imprisonment sentence (in duration of 6 months), whereas alternative measures, i.e. probation sentences were issued under 16 court rulings.

The basic prosecution offices have acted in 32 cases related to torture and other cruel, inhuman or degrading treatment and punishment. Only seven of them implied investigation proceedings and resulted in indictments.

In terms of ill-treatment while performing an official duty, the prosecution offices have acted in 138 cases, of which 30 cases included investigation activities and indictments were raised in 22 cases.

<sup>10</sup> Helsinki Committee for Human Rights, 2015 Annual Report on Human Rights in the Republic of Macedonia



## ECtHR's judgments

From the total of 11 applications motioned against the Republic of Macedonia on the grounds of Article 3 of the European Convention on Human Rights (ECHR) in the period 2008-2015, the European Court of Human Rights (ECtHR) has taken judgments in eight cases establishing that the national authorities, i.e. competent prosecution offices have failed to conduct effective investigation into allegations made by the applicants that they had been exposed to police brutality, inhuman and degrading treatment and punishment.

Applicants under half of these eight judgements are Macedonian citizens of Roma nationality, which is rather indicative and deserves to be paid greater attention, in particular because it demonstrates over-representation of Roma in cases related to police brutality and having in mind the share of Roma population in the total population of the Republic of Macedonia.

Concerns are also raised by the fact that as many as four judgements are taken in the course of 2015, which is indicative of the continuous and increasing trend on failure to conduct effective investigation in cases when citizens claimed they have been exposed to police brutality. These data should be taken very seriously, especially given the number of cases that have not been followed by applications lodged before the European Court of Human Rights.

### **JASAR v. REPUBLIC OF MACEDONIA (application no. 69908/01, judgment of 15th February 2007)**

The applicant complained that he had been subjected to acts of police brutality, which had caused him great physical and mental suffering amounting to torture, inhuman and/or degrading treatment. Furthermore, he alleged that he had been victim of procedural violation of Article 3 of the Convention, since the public prosecution had failed to carry out effective or any official investigation that would lead to identification and punishment of police officers responsible for such treatment.

In its judgment, ECtHR reiterated that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as fight against terrorism and organized crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment and does not provide exceptions and no derogation from it is permissible under Article 15, paragraph 2, even in the event of public emergency threatening the life of the nation.

Furthermore, the Court recalled that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as duration of the treatment, physical and/or mental effects and, in some cases, sex, age, and state of health of the victim.

The Court considered noteworthy that the applicant filed a criminal complaint with the public prosecutor and lodged his compensation claim more than a month after the decisive event. The applicant's lawyer lodged a criminal complaint about the alleged police brutality together with the medical certificate, so the public prosecutor was under the duty to investigate whether an offence had been committed. In this respect, the Court found that it is particularly striking that the public prosecutor did not take investigative measures after receiving the criminal complaint from the applicant's lawyer. The Court noted that the national authorities took no steps to identify who was present when the applicant was apprehended or when his injuries were received, nor is there any indication that witnesses, police officers concerned or the doctor who examined the applicant were questioned about the applicant's injuries. Furthermore, the public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicant as to the alleged ill-treatment. Inactivity of the public prosecutor prevented the applicant from taking over the investigation as subsidiary complainant and denied him access to subsequent proceedings before the court of competent jurisdiction. The applicant is still barred from taking over the investigation as the public prosecutor has not yet taken decision to dismiss the complaint.

The Court upheld that there has been a violation of Article 3 of the Convention on the account of the failure of competent authorities to conduct an effective investigation into the applicant's allegations that he was ill-treated by the police.

Jasar v. Republic of Macedonia is the first case against the Republic of Macedonia which established violation of Article 3 of the Convention and, as such, represents the leading case used in ECtHR's case-law. Hence, the exceptional importance of this case is seen in the fact that it represents basis for other cases motioned against Republic of Macedonia and related to violation of Article 3 of the Convention concerning failure to conduct effective investigation.

**DZELADINOV AND OTHERS v. REPUBLIC OF MACEDONIA**  
**(application no. 13252/02, judgement of 10th April 2008)**

In this case, the applicants complained that they had been assaulted and ill-treated by police officers and that there had been no effective investigation into their complaints.

The Court underlined that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the state, that provision, read in conjunction with the state's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in... the Convention" implies that there should be an effective official investigation.

The investigation into serious allegations of ill-treatment must be thorough. The investigation must be expeditious.

Applying the general principles in the case, the Court concluded that there was no investigation into the applicants' claim that they had sustained the alleged injuries at the hands of the police. Thus, in that regard the Court found that there has been a violation of Article 3 of the Convention on the account of the failure of competent authorities to conduct an effective investigation into the applicants' allegations of ill-treatment by the police.

**SULEJMANOV v. REPUBLIC OF MACEDONIA**  
**(application no. 69875/01, judgment of 24th April 2008)**

This case is identical to the previous two cases, i.e. Jasar v. Republic of Macedonia and Dzeladinov and others v. Republic of Macedonia, whereby the applicant complained under Article 3 of the Convention that he had been subjected to acts of police brutality inflicting on him great physical and mental suffering which amounted to torture or inhuman and/or degrading treatment. Furthermore, the applicant alleged that he was a victim of procedural violation since the public prosecution had failed to proceed with effective official investigation capable of leading to identification and punishment of the police officers responsible.

As in the previous cases, the Court pointed out that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the state, that provision, read

in conjunction with the state's general duty under Article 1 of the Convention "to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention" implies that there should be effective official investigation. Moreover, the Court established that the investigation must be expeditious.

Applying the general principles in this case, the Court again located responsibility with the public prosecutor, i.e. he was under the duty to investigate whether an offence had been committed. However, he did not take any investigative measures after receiving the criminal complaints, apart from requesting additional inquiries from the Ministry of Interior. The public prosecutor's "written conclusion" about the incident cannot alter the Court's conclusion that the investigation did not satisfy the requirements of Article 3 of the Convention.

The Court concluded that there was no thorough or effective investigation of the applicant's claim that he had sustained the alleged injuries at the hands of the police. Thus, in this regard the Court found there has been a violation of Article 3 of the Convention on account of the failure of the competent authorities to conduct an effective investigation into the applicant's allegations that he was ill-treated at the hands of the police.

### **ASLLANI v. REPUBLIC OF MACEDONIA (application no. 24058/13, judgment of 10th December 2015)**

The applicant in this case complained that he had been ill-treated by the police and that the ensuing investigation into his allegations of police brutality had been ineffective.

The applicant claimed that he had been physically assaulted by the police and that the related criminal proceedings had not yet ended. The Court considered that these complaints fall to be examined under both substantive and procedural aspects of Article 3 of the Convention.

In its assessment, the Court reiterated that in assessing evidence it adopted the standard of proof "beyond reasonable doubt". Its role was not to rule on criminal guilt or civil liability, but on the contracting states' responsibility under the Convention.

In this case, the Court was not led by the rule whereby the Convention proceedings do not in all cases lend themselves to strict application of the principle *affirmanti incumbit probatio* [the burden of proof is upon him who affirms]. The Court reiterated its case-law under Articles 2 and 3 of the Convention to the effect

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that there where the events in the issue lie within the exclusive knowledge of the authorities, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. In such cases, the burden of proof may be regarded as resting on the authorities to provide satisfactory and convincing explanation.

In this case as well, the Court reiterated that where an individual is taken into police custody in good health and found to be injured on release, it is incumbent on the state to provide plausible explanation of how those injuries were caused, failing which a clear issue under Article 3 of the Convention arises (see *Mafalani v. Croatia*, no. 32325/13, § 119, 9 July 2015).

The Court found it incontrovertible that on 21 March 2008 the applicant entered the police station in Resen and had a discussion with the commanding officer, in the presence of third parties and in the presence of police officers, and that there is nothing to suggest that he had any injuries when he entered the police station. Also, the Court found that at 5:30 a.m. on 21 March 2008 he had asked for medical assistance at the Ohrid Hospital concerning injuries specified in the medical certificate issued on that occasion.

In this case, the Court was satisfied that there is prima facie [at first sight] evidence in favour of the applicant's version of events and that the burden of proof should shift to the government. However, the government failed to provide satisfactory and convincing explanation as to the origin of the applicant's injuries specified in the medical records and the actual circumstances in which they were caused.

In this case as well, the Court upheld that there has been a violation of Article 3 of the Convention on account of the authorities; failure to conduct an effective investigation into the applicant's allegations of police brutality, and that there has been a violation of Article 3 of the Convention on the account of inhuman and degrading treatment by the police during the applicant's questioning at the police station in Resen on 21 March 2008.

# V. PUBLICLY AVAILABLE DATA ON ROMA OFFENDERS AND VICTIMS OF CRIME

## Data from the State Statistical Office of the Republic of Macedonia

### I. Adult Criminal Offenders

According to publicly available data related to adult criminal offenders in the period 2011-2015, as presented in the table below, it is evident that nearly 11% of all convicted persons are members of the Roma ethnic community.

Table 1: Adult offenders

Year	Total convicted persons	Macedonians	Albanians	Turks	Roma	Vlachs	Serbs	Bosniaks	Other	Unknown
2011	9,810	5,329	1,969	343	1,130	20	77	77	148	717
2012	9,042	4,605	1,899	457	996	18	80	65	113	809
2013	9,539	4,361	2,152	504	1,083	11	49	66	93	1,220
2014	11,683	6,093	2,214	549	1,180	13	74	105	145	1,310
2015	10,312	4,438	2,069	371	1,091	17	60	95	270	1,901
<b>Total:</b>	<b>50,386</b>	<b>24,826</b>	<b>10,203</b>	<b>2,224</b>	<b>5,480</b>	<b>79</b>	<b>340</b>	<b>408</b>	<b>769</b>	<b>5,957</b>
<b>%:</b>	<b>100%</b>	<b>49.27%</b>	<b>20.25%</b>	<b>4.41%</b>	<b>10.88%</b>	<b>0.16%</b>	<b>0.67%</b>	<b>0.81%</b>	<b>1.53%</b>	<b>11.82%</b>

Source: State Statistical Office of the Republic of Macedonia

Insights into the most frequently committed crimes by adult Roma who were convicted in the period 2011-2015 shows that nearly 2/3 of all offences perpetrated by Roma concerns crimes against the property.

Less than 5% of all committed crimes belong to the group of crimes against life and body and crimes against public peace and orders, while less than 3% belong to the group of crimes against marriage, family and youth and the group of crimes against human health.

Table 2: Most frequent criminal offences perpetrated by Roma adults

Year	Total number of convicted Roma	Crimes against property	Crimes against life and body	Crimes against public peace and order	Crimes against marriage, family and youth	Crimes against human health
2011	1,130	813	53	43	47	49
2012	996	746	68	41	28	21
2013	1,083	825	44	32	28	22
2014	1,180	830	65	77	23	22
2015	1,091	818	41	67	21	27
<b>Total:</b>	<b>5,480</b>	<b>4,032</b>	<b>271</b>	<b>260</b>	<b>147</b>	<b>141</b>
<b>%:</b>	<b>100%</b>	<b>73.58%</b>	<b>4.95%</b>	<b>4.74%</b>	<b>2.68%</b>	<b>2.57%</b>

Source: State Statistical Office of the Republic of Macedonia

## 2. Children in Conflict with the Law

Available data on children in conflict with the law registered as criminal offenders in the period 2011–2015 show that 16% of all children that have come in conflict with the law, i.e. committed criminal offences in this period, were children of Roma ethnic background.

Table 3: Children in conflict with the law

Year	Total convicted persons	Macedonians	Albanians	Turks	Roma	Vlachs	Serbs	Bosniaks	Other	Unknown
2011	722	268	209	36	97	1	1	7	8	95
2012	556	198	101	36	96	0	0	15	1	109
2013	473	172	129	32	66	0	0	4	5	65
2014	461	206	121	26	85	0	0	11	3	9
2015	348	110	85	8	81	1	0	0	2	61
<b>Total:</b>	<b>2,560</b>	<b>954</b>	<b>645</b>	<b>138</b>	<b>425</b>	<b>2</b>	<b>1</b>	<b>37</b>	<b>19</b>	<b>339</b>
<b>%:</b>	<b>100%</b>	<b>37.3%</b>	<b>25.2%</b>	<b>5.4%</b>	<b>16.6%</b>	<b>0.1%</b>	<b>0.0%</b>	<b>1.4%</b>	<b>0.7%</b>	<b>13.2%</b>

Source: State Statistical Office of the Republic of Macedonia

In the case of more than 80% of criminal offences, Roma children appear as offenders of crimes against property, which is not different from Roma adults registered as criminal offenders.

Concerns are raised with the fact that Roma children appear as offenders of around 5% of crimes against sexual freedom and sexual moral. These crimes account for the same share in total number of criminal offences committed by Roma children with the respective share of crimes against public peace and order, which leads to the conclusion that Roma children uphold different system of values in regard to sexual acts, which could be partially attributed to early marriages and forced marriages.

Table 4: Most common criminal offences committed by Roma children

Year	Total number of convicted Roma children	Crimes against property	Crimes against sex freedom and sex moral	Crimes against life and body	Crimes against public peace and order	Crimes against safety in traffic
2011	97	85	4	1	1	4
2012	96	88	2	1	2	1
2013	66	58	3	1	0	1
2014	85	62	6	2	9	3
2015	81	55	5	9	8	3
<b>Total:</b>	<b>425</b>	<b>348</b>	<b>20</b>	<b>14</b>	<b>20</b>	<b>12</b>
<b>%:</b>	<b>100%</b>	<b>81.9%</b>	<b>4.7%</b>	<b>3.3%</b>	<b>4.7%</b>	<b>2.8%</b>

Source: State Statistical Office of the Republic of Macedonia



## Data from the Administration for Execution of Sanctions at the Ministry of Justice of the Republic of Macedonia

The annual report of the Administration for Execution of Sanctions provides data on the situation related to detained and convicted persons by 31.12.2015.

Data presented below show that the number of Roma in detention is lower compared to the number of Roma serving their imprisonment sentences. According to the status on 31st December 2015, Roma accounted for 5.6% of all detainees, while their share in the prison population is three times higher and accounts for 15.2 %.

Table 5: Ethnicity of detainees	Status on 31.12.2015	
	Number	%
Macedonians	107	33.6
Albanians	153	48.1
Roma	18	5.7
Turks	13	4.1
Serbs	10	3.1
Other	17	5.3
<b>Total</b>	<b>318</b>	<b>100.0</b>

Table 6: Ethnicity of convicted persons	Status on 31.12.2015	
	number	%
Macedonians	1,289	41.8
Albanians	988	32.0
Roma	468	15.2
Turks	143	4.6
Serbs	56	1.8
Other	143	4.6
<b>Total:</b>	<b>3,087</b>	<b>100.0</b>

Source: Data from the Administration for Execution of Sanctions

The lower share of Roma among detained persons is due to the fact that, in most cases, they commit crimes against property, which are rarely subject to issuance of detention measures.

## Data on recidivism among Roma children

The State Council for Prevention of Children Delinquency conducted the research study on risk factors contributing to recidivism among children that would provide information for better prevention of juvenile delinquency<sup>11</sup> compared to the situation in 2014.

<sup>11</sup> Research results were published in the Macedonian Journal on Criminal Law and Criminology for 2014.

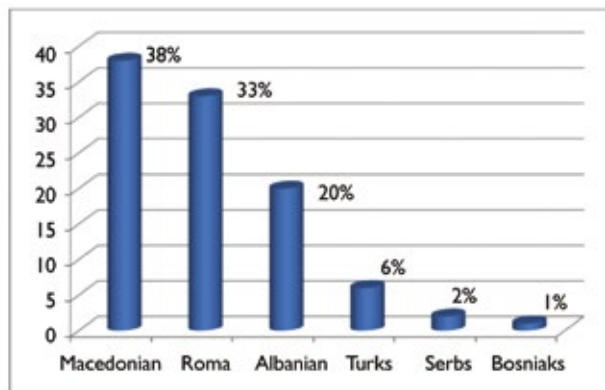
This research showed high share of recidivism among children of Macedonian and Roma nationality. In particular, the researchers defined the profile of the child recidivist by taking into account several aspects related to the child, his/her family and the manner in which the criminal offence was committed.

The child recidivist is a boy at average age of 13 years, Macedonian or Roma, attending secondary school or not included in the education process.

As regards family profile of the child recidivist, the research showed that the main problem in this regard concerns complete, but dysfunctional family.

As regards the criminal offences, they are most commonly perpetrated in group with other children or in group with adults and children.

Chart 1: Recidivism among Roma children



Source: Data from the research study conducted by the State Council for Prevention of Children Delinquency

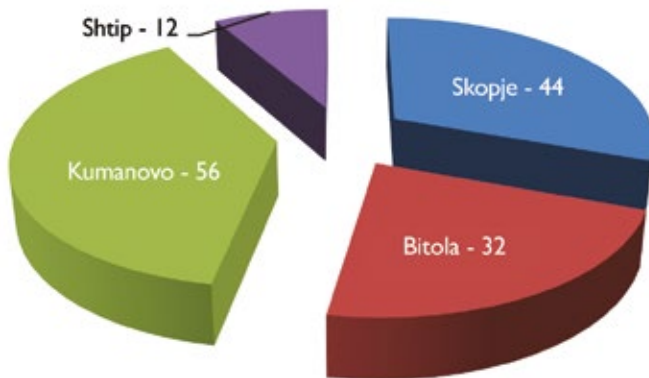
Based on data collected, the authors of this research established that children of Macedonian ethnicity account for the highest share of children recidivists and account for 38%, followed by children recidivists from the Roma population, which account for 33%.

# VI. EMPIRICAL ANALYSIS: THE STATUS OF ROMA IN CRIMINAL PROCEEDINGS

## I. DATA ON OFFENDERS

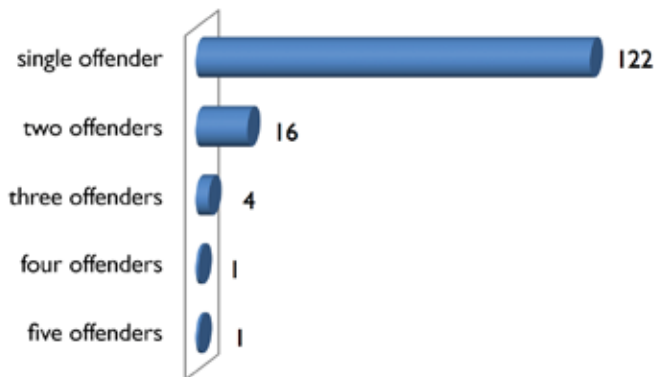
**Rulings taken by basic courts:** This section of the analysis covered a total of 144 rulings taken by the basic courts in Skopje, Shtip, Bitola, and Kumanovo, all of which operated under extended territorial jurisdiction. The breakdown of rulings per court jurisdiction is presented on the chart below.

Chart 2: Number of rulings per court jurisdiction



**Number of offenders per criminal offence:** Analysis of this aspect in terms of basic court rulings emerged due to the fact that the total of 144 court rulings actually included 168 convicted persons, while 7 suspects were acquitted of their criminal charges, i.e. they were issued acquittal rulings.

Chart 3: Number of offenders per criminal offence

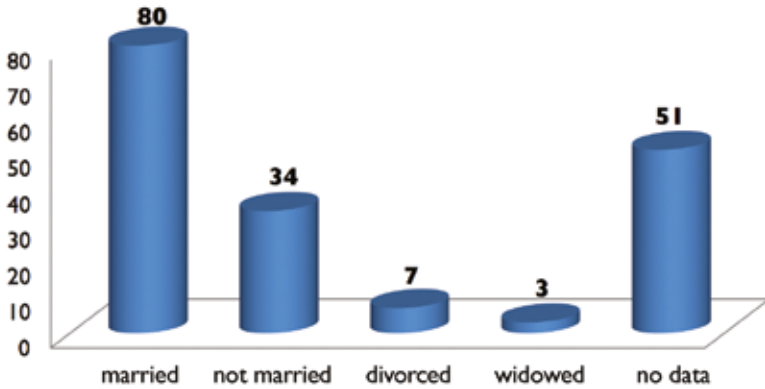


**Gender breakdown:** The total of 144 court rulings included 175 criminal offenders. Only 7 of them are women. It should be noted that one woman was convicted as single criminal offender, while among the remaining six female offenders three committed their offences together with another person, and three committed their offences in groups of three convicted persons. Women appear as offenders of crimes against property and crimes stipulated under Article 201 of the Criminal Code, i.e. child neglect and ill-treatment.

**Age breakdown:** In the case of vast majority among 175 convicted offenders, i.e. 157 perpetrators or nearly 90%, there are no data about their age, having in mind the fact that court rulings include anonymization of their single identification numbers and their dates of birth. Data are available for 18 convicted persons, but their number is insufficient to infer argument-based conclusions about the age structure of criminal offenders.

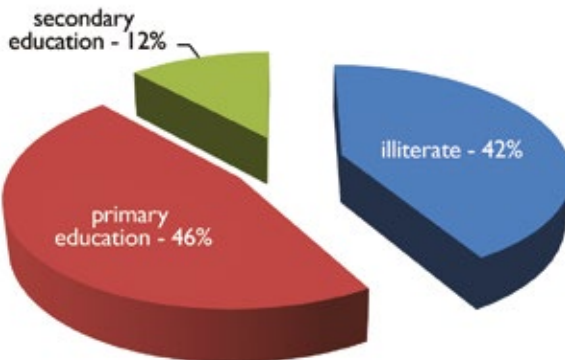
**Marital status:** Data on marital status is available for 124 out of 175 criminal offenders, accounting for nearly 70%. According to these data, it is evident that majority of criminal offenders are married, accounting for 80 persons or 46% from their total number, 34 convicted persons (or 19%) are not married, and the relevant shares of divorced and widowed persons are very low. In the case of 51 persons, which account for 29 % of all convicted persons, analysed court ruling do not include data on their marital status.

Chart 4: Overview of criminal offenders according to their marital status



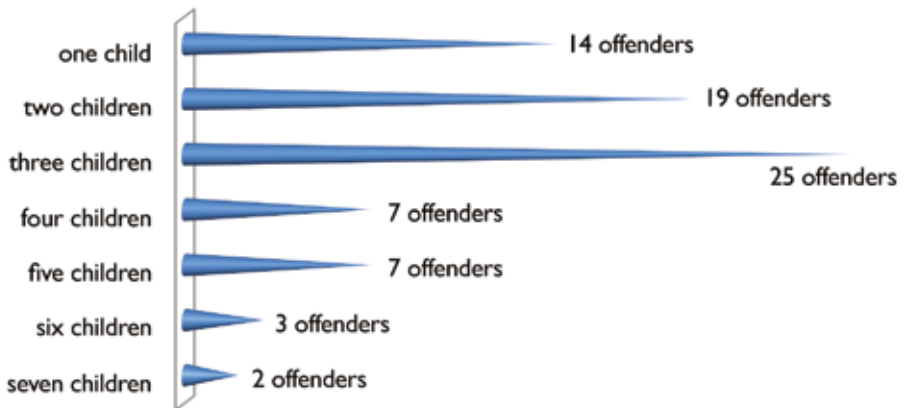
**Education level:** As regards the education level of criminal offenders, data presented in the court rulings allow certain estimates to be inferred about the shares of those who are illiterate, have completed primary education or have completed secondary education. The analysed court rulings include data about the education level of about 137 persons in total, of which 57 are illiterate. As regards the education level, data are available for 80 persons with the following breakdown: 60 offenders have completed primary education, 16 have completed secondary education, and there are no offenders with completed higher education. Relevant shares of offenders according to their education level are presented in the chart below.

Chart 5: Overview of criminal offenders according to their education level



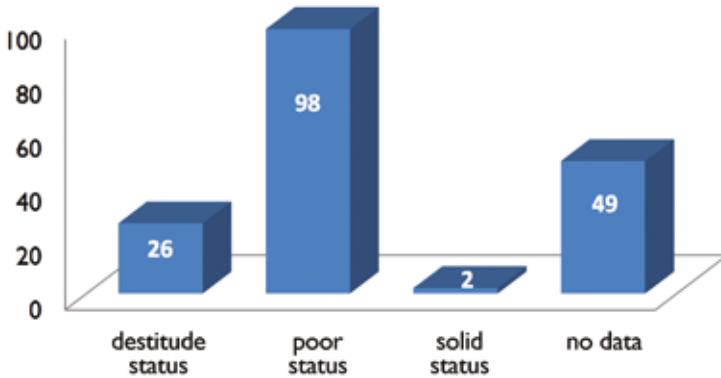
**Number of children:** The analysis of court rulings showed that only 77 out of 175 offenders are parents. The absolute figures on the number of children are presented in the chart below. Data show that criminal offenders rarely have more than three children. Nevertheless, when the number of children is correlated to the offender's financial status, it becomes evident that a dominant number of families are without property or in possession of insignificant property, and therefore the figure of three children per family should be considered as families with multiple children, especially due to their inability to meet the basic sustenance needs of the children, but also of the family, i.e. household members.

Chart 6: Overview of offenders according to the number of children



**Property status:** Based on data available in court rulings, it is evident that criminal offenders are of deprived or destitute property status. Among total of 175 offenders, 15% do not dispose with any property, while high 56% of them are of poor property status. Deprived property status could be considered as one of risk factors that most often lead offenders to commit crimes against property.

Chart 7: Overview of offenders according to their property status

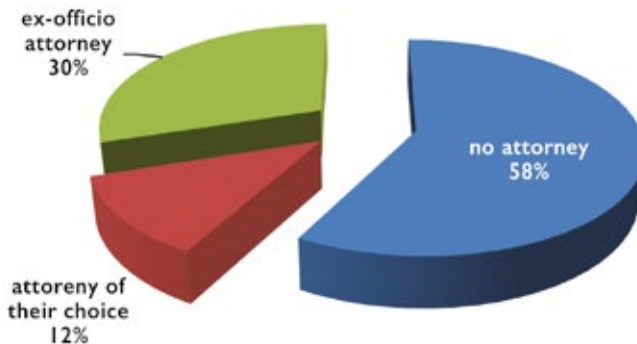


**Social status:** The analysed court rulings provide information about the social status of 131 from the total of 175 offenders, indicating that 120 of them are unemployed and only 11 are employed.

**Representation by defence attorney:** The court rulings include information about attorney representation for 164 out of 175 offenders, whereby 95 of them did not have any representation, 19 have chosen their own defence attorney, and 50 were appointed state-mandated ex officio defence attorneys.

**Provision of interpreter in court proceedings:** None of the total of 144 court rulings provides information whether Roma language interpreters were secured in the course of court trials, which raises the question whether defendants have completely understood the indictments raised against them.

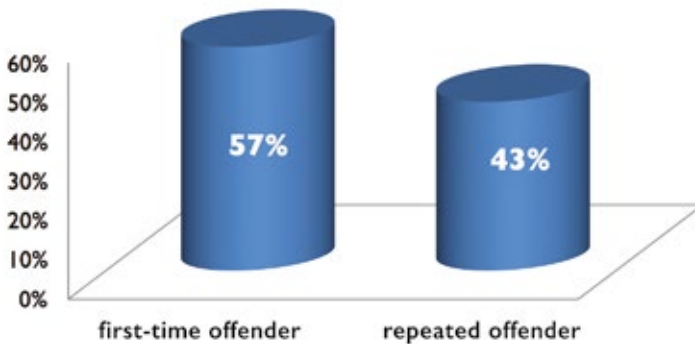
Chart 8: Overview of offenders according to attorney representation



**Previous convictions and recidivism:** The court rulings include information about first-time offences or recidivism for all convicted persons. In that, 100 out of 175 offenders or 57% of all convicted persons appear as first-time offenders, while 75 offenders or 43% of their total number are recidivists, i.e. they have been previously convicted.

In the case of 45 out of 75 offenders with previous criminal records or 60% of their total number, the court ruling was taken for the same type of criminal offence committed. These figures are indicative of high percentage of specific recidivism, which is dominated by crimes against property.

Chart 9: Overview of first-time offenders and recidivists



**Types of criminal offences:** In order to obtain an image about the type of crimes committed, the table below provides detailed overview of criminal offences perpetrated. It can be observed that the number of criminal offences committed is higher than the number of convicted persons, which leads to the conclusion that certain court rulings include one offender, but multiple offences. On the other hand, it does not come as surprise that thefts and robberies are the most frequently committed offences, having in mind the social and property status of criminal offenders.



Table 7: Types and number of crimes committed

Crime	Total number	Crime	Total number
Body injury, Article 130	6	Fraud, Article 247	2
Serious body injury, Article 131	1	Hacking and damaging computer system, Article 251	1
Endangerment of security, Article 144	5	Cover up, Article 261	10
Sexual assault against child under the age of 14 years, Article 188	1	Violation of industrial property rights and unauthorized use of somebody else's company, Article 285	1
Neglect and maltreatment of child, Article 201	4	Falsification of official documents, Article 378	5
Unauthorized production and circulation of narcotics, psychotropic substances and precursors, Article 215	4	Prevention of an official to perform their tasks and duties, Article 382	1
Theft, Article 235	36	Attack on an official when performing their tasks and duties, Article 383	1
Electricity, heating energy or natural gas theft, Article 235-a	6	Violence, Article 386	1
Serious theft, Article 236	88	Removal or damage to official stamp or sign, Article 389	1
Robbery, Article 237	4	Unauthorized production, storage, mediation and trade in weapons or explosive materials, Article 396	3
Illegal construction activity, Article 244-a	1	<b>Total:</b>	<b>182</b>

Source: Analysis of publicly available court rulings

**Criminal sanctions:** According to available data, it is noted that most dominant sanctions issued concern alternative measures, i.e. probation sentences.

Imprisonment sentences are issued in various duration ranging from three months to 15 years of imprisonment. Among them, the most frequent are short-term imprisonment sentences in duration up to 12 months (total of 39 sentences or almost 56 % of all imprisonment sentences).

Table 8: Types of criminal sanctions and verdicts

<b>Criminal sanction</b>	<b>Total number</b>
<b>Probation sentences</b>	<b>95</b>
<b>Court warnings</b>	<b>1</b>
<b>Fines</b>	<b>3</b>
<b>Imprisonment in duration of:</b>	<b>69</b>
up to 6 months	9
6 to 12 months	15
12 months	15
up to 18 months	4
18 months	6
up to 24 months	1
24 months	5
up to 30 months	1
30 months	4
up to 3 years	4
3 years	2
4 years	1
15 years (in defendant's absence)	2
<b>Acquittal sentences</b>	<b>3</b>
<b>Indictment rejections</b>	<b>4</b>
<b>Total:</b>	<b>175</b>

Source: Analysis of available court rulings

When the court sanctions are correlated against the most common criminal offences, i.e. theft and aggravated theft, we obtain data as presented in the table below. Namely, in most cases (56%) the criminal offence qualified as theft was sanctioned with alternative measure, i.e. probation sentence, while the most frequently issued sanction for aggravated theft included imprisonment sentences (66%).

Table 9: Criminal sanctions issued for the most common offences

Criminal sanction	Theft		Aggravated theft	
	Total	%	Total	%
<b>Total</b>	<b>36</b>		<b>88</b>	
<b>Imprisonments</b>	<b>11</b>	<b>31%</b>	<b>58</b>	<b>66%</b>
<b>Fines</b>	<b>3</b>	<b>8%</b>	<b>0</b>	<b>0</b>
<b>Probation sentences</b>	<b>20</b>	<b>56%</b>	<b>26</b>	<b>30%</b>
<b>Court warnings</b>	<b>1</b>	<b>3%</b>	<b>0</b>	<b>0</b>
<b>Acquittal sentences/indictment rejections</b>	<b>1</b>	<b>3%</b>	<b>4</b>	<b>5%</b>

Source: Analysis of available court rulings

When these data are correlated with statistics from the State Statistical Office for the period 2011–2015 (shown in Table 4), there is evident overlap in terms of the most frequent sanctions issued for criminal offences theft and aggravated theft, whereby theft was most often sanctioned with alternative measure, i.e. probation sentences, while in the case of aggravated theft, the most frequently issued sentence implied imprisonment.

Table 10: Criminal sanctions issued to adult offenders

Year	Theft					Aggravated theft				
	Total	Imprisonments	Fines	Probation sentences	Other sanctions	Total	Imprisonments	Fines	Probation sentences	Other sanctions
2011	1,017	286 28%	220 22%	503 49%	8 1%	1,839	1,116 61%	64 3%	656 36%	3 0.2%
2012	1,121	304 27%	413 37%	395 35%	9 1%	1,707	1,006 59%	56 3%	629 37%	16 1%
2013	1,331	340 26%	369 28%	602 45%	20 2%	1,845	1,177 64%	88 5%	574 31%	6 0.3%
2014	1,112	219 20%	326 29%	555 50%	12 1%	1,634	987 60%	90 6%	541 33%	16 1%
2015	1,197	253 21%	194 16%	735 61%	15 1%	1,687	1,086 64%	55 3%	537 32%	9 1%
<b>average:</b>		<b>24.4%</b>	<b>26.4%</b>	<b>48%</b>	<b>1.2 %</b>	<b>average:</b>	<b>61.6%</b>	<b>4%</b>	<b>33.8%</b>	<b>0.7%</b>

Source: State Statistical Office of the Republic of Macedonia

## II. DATA ON VICTIMS OF CRIME

The analysed court rulings include little data on victims of criminal offences. It is evident that judges are more focused on data related to offenders, without paying due attention to data about victims thereof.

Based on data presented in the court rulings analysed, information is provided for only 15 victims of criminal offences, whereby portion of them are victims of domestic violence, portion of them are victims of body injuries and serious body injuries, and the remaining are victims of sexual assault on children.

According to their gender, 8 victims are women and 7 victims are men.

Having in mind the fact that majority of them are victims of domestic violence, family relations are common between offenders and their victims, as follows: spouses, relatives, parents of defendants, children of defendants and neighbours.

## VII. INSIGHTS FROM INTERVIEWS CONDUCTED WITH REPRESENTATIVES OF NON-GOVERNMENTAL ORGANIZATIONS

For the purpose of this analysis, the project team conducted interviews with four representatives of civil society organizations that work on promotion and protection of human rights and freedoms, especially of marginalized and discriminated groups in society.

During the interview with Lj. Sh., president of Roma NGO, information was obtained that this organization has acted as mediator in several cases involving evident violation of Roma rights, i.e. excessive use of police powers. They were immediately referred to other organizations that provide free legal aid in order to have these cases duly processed.

According to information provided by Lj. Sh., Roma are discriminated in proceedings led before the courts, they enjoy unequal treatment at different state bodies and institutions and are still subjected to use of excessive force by law enforcement authorities. Moreover, effective investigations are not conducted when members of the Roma community appear as victims of police brutality.

Below are several cases involving Roma which Lj. Sh. has referred for further processing to the Helsinki Committee for Human Rights in the Republic of Macedonia.

**POLICE ILL-TREATMENT IN SETTLEMENT “TOPAANA”:** On May 5th 2013, MOI raided the Skopje-based settlement “Topaansko Pole” to apprehend convicted person who, after being released for weekend leave from the correctional and penitentiary facility “Idrizovo”, did not return to finish serving his imprisonment sentence. On May 6th 2013, the media reported about excessive use of force on the part of police officers participating in this raid. After contacting a group of people who complained in the media about the course of this police action, representatives of the Helsinki Committee, on May 8th 2013, visited the settlement “Topaansko Pole” to interview these people. Interviews took place with a large group of citizens, all members of the Roma ethnic community. Four of them reported that they were direct victims of police actions which implied physical and psychological ill-treatment. Although innocent victims, they were arrested and brought before an investigation judge who initiated investigation proceedings wherein they were accused of allegedly having committed attack on official when performing actions related to public security

and were issued preventive measure defined as obligation to appear at the court every Monday. Effective investigation was not conducted into this case that would examine allegations about police brutality.

**POLICE TORTURE AT “IDRIZOVO” AGAINST MEMBER OF THE ROMA COMMUNITY:** After Selim Demo, father of Zuher Ibraimov, submitted an application for free legal aid, the Helsinki Committee actively monitored and acted in the case of torture at the correctional and penitentiary facility “Idrizovo”, in which the convicted person Ibraimov, after being attacked by member of the prison security department, had one kidney and liver surgically removed. This incident took place at prison “Idrizovo” on 12th March 2013 at the location called “pigpen” when Ibraimov, together with another prisoner, was engaged in repairing TV-set. After Ibraimov was spotted by members of the prison security service, he was asked what he is doing there, and immediately afterwards started battering the prisoner.

**POLICE ILL-TREATMENT AT SETTLEMENT “DUKJANDJKJ” UNDER THE KALE FORTRESS:** Two underage homeless children were walking to the store, but were intercepted by members of the special police unit “Alpha” who attacked them, physically abused and threatened them into admission of having perpetrated robbery, i.e. having stolen the handbag from a woman that has reported this case to the police. The underage children were taken to the police station “Beko” unaccompanied by their parents, where they were subjected to continued police brutality and were forced to sign statements without their parents being present. When faced with the woman who reported the robbery, the same denied that indicated children had committed the crime in question. The case was processed and court proceedings are underway on the grounds of excessive use of police powers.

**During the interview with project manager on protection of human rights,** information was collected that in practice there are cases of violation of human rights and freedoms, as well as cases concerning unequal treatment of members of the Roma community in criminal proceedings. More specific examples indicated during this interview included:

**An underage Roma girl from Vinica was injured in traffic accident by middle-aged Macedonian.** In this case, the traffic accident was caused by a middle-aged Macedonian who enjoys strong local influence, and it resulted in serious body injuries for the Roma girl, i.e. pelvic fracture. Medical doctors qualified this injury as minor body injury, although the type and character of this injury necessitates qualification

of serious criminal offence, which is prosecuted ex-officio. The non-governmental organization reacted and notified the Ombudsman Office about actions on the part of health services, i.e. medical doctors. In the course of future proceedings, the girl's parents declined additional measures to be taken to clarify circumstance of this case, because they lacked sufficient funds to continue the procedure, i.e. secure medical forensics that would establish the type and character of injuries, i.e. whether it is a matter of serious body injury or minor body injury. Given the unfavourable social and economic status of the victim's parents, there were no possibilities to bring this case to final resolution.

**Second case that implied unequal treatment concerns prisoner Bejto Sejfula from Skopje.** In particular, Bejto Sejfula was user of narcotics and was sentenced to imprisonment for criminal offence theft. According to statements made by his mother, at the prison where he served his sentences her son was admitted to methadone therapy and after completing the therapy course, he stopped taking methadone. His health condition started deteriorating, but medical doctors failed to diagnose what happened to his health. His mother shared statements made by his prison roommate, who said that Bejto Sejfula was unable to get up and go to the prison stationary. Prison security services have established that he rejected medical assistance. On insistence by his mother, he was released to home care and three days later died at home. Medical doctors established that his death was of non-violent nature. This case depicts the position of prisoners and conditions at the prisons.

## VIII. INSIGHTS OBTAINED FROM INTERVIEWS CONDUCTED WITH ATTORNEYS REPRESENTING ROMA IN POLICE AND COURT PROCEEDINGS

### **Police treatment in cases involving members of the Roma community**

Experiences shared during interviews conducted for the purpose of this analysis include the case of one attorney representing client of the Roma ethnic community in pre-investigation proceedings led before the Public Prosecution Office. In particular, this event involved one Roma child suspected of having committed robbery as qualified by on-duty police officers, although the same could have been subsumed as misdemeanour related to disturbance of public peace and order, having in mind the fact that this act did not involve theft of particular object, money or similar items, as precondition necessary to qualify this offence as robbery. Nevertheless, in the course of police proceeding unlearned parties gave statements without the presence of defence attorney and the police motioned criminal charges before the Basic Public Prosecution on the grounds of criminal offence robbery, pursuant to Article 273 of the Criminal Code. In the course of pretrial proceedings led before the Basic Public Prosecution, a female suspect had given statement in the presence of defence attorney advised by the latter of all aspects related to this event, as well as absence of element for this legal event to be qualified as criminal offence pursuant to Article 273 of the Criminal Code. As part of pre-trial proceedings led before the Basic Public Prosecution, the suspect deposited a statement in the presence of her defence attorney who had clearly advised her of all aspects related to the events, as well as the non-existence of elements for such legal event to be qualified as criminal offence according to Article 237 of the Criminal Code. At that time, the competent public prosecutor acted fairly and correctly, aware of the fact that there are no elements of the criminal offence put on the burden of the suspect and therefore decided to discontinue any further proceedings.



## IX. CONCLUSIONS AND RECOMMENDATIONS

This analysis provides findings and conclusions on the status of Roma as defendants in criminal proceedings in terms of their procedural position, their rights as defendants in court proceedings, as well as efficiency and effectiveness of investigations performed by law enforcement authorities.

In that, it becomes evident that Roma are discriminated in proceedings taken by the police and their claims on police brutality are not followed by effective investigations. Half of the total number of judgments taken by the European Court of Human Rights against the Republic of Macedonia in relation to violation of Article 3 of the Convention which establish inefficient and ineffective investigation on the part of prosecution offices concern Roma who complained of excessive use of police powers and excessive use of force.

Interviews conducted with representatives of civil society organizations that work in the field of protection of Roma rights provided indicative findings, while their reports and their work allow the conclusion that Roma are facing unequal treatment and discrimination, primarily during police and investigation proceedings.

On the other hand, unequal treatment of Roma was not observed in the course of court proceedings.

**The analysis of court rulings** did not allow identification of any tendencies or accidental discrimination in the terms of procedural position of Roma defendants. However, the criminal cases are indicative of discrimination in the broad sense of the word, i.e. inability of Roma defendants to adequately utilize procedural remedies and motions as stipulated in the laws. In particular:

- concerns are raised by the fact that high number of Roma defendants are not represented by defence attorneys in court proceedings;
- Roma defendants face problems in terms of access to justice due to lack of funds to engage defence attorney to represent them in court proceedings and therefore they rely on legal aid provided by the non-governmental sector or do not benefit from any legal aid;

- It was established that Roma defendants need to be provided interpreters in court proceedings, as none of the analysed court rulings referred to the fact that Roma language interpreter was secured, which raises the question whether the defendants completely understood indictments raised against them;
- due to the poor economic and financial status of Roma, they are unable to secure necessary evidence to initiate proceedings before courts of competent jurisdiction.

Based on the analysis of court rulings, the conclusion was inferred that the courts did not issue stricter sanctions solely on the grounds of defendants' ethnicity, which became evident from comparison of sanctions imposed for criminal offences theft and aggravated theft at state level with data provided in the analysed court rulings related to Roma offenders.

In some cases, stricter sanctions issued by the courts are a result of the Law on Setting Type and Amount of Criminal Sanctions and Fines against persons who had been previously convicted, irrespective of the gravity of the current criminal offence.

The civil society organizations perceive the problem related to discrimination of Roma in more essential and sensitive manner.

In continuity, several civil society organizations have indicated use of excessive powers by law enforcement authorities in cases involving members of the Roma community and failure to conduct effective investigations upon allegations that they had been exposed to police brutality.

Findings and conclusions presented in this analysis indicated to the need for comprehensive approach and treatment of Roma in terms of their position in the society, i.e. their vulnerability and oppression.

Due to their lack of education, Roma are often victims of police brutality. The high share of specific recidivism among Roma offenders is a result of several risk factors, such as:

- poor economic status;
- low level of education;

- unemployment;
- multiple convictions;
- domestic violence;
- multigenerational households;
- housing insecurity or lack thereof;
- transgenerational learned behaviour;
- dysfunctional families.

Moreover, concerns are raised with the high share of juvenile delinquency, especially among children recidivists. In particular, Roma children account for 33% of the total number of children recidivists.

## Recommendations

On the basis of findings and conclusions established under this analysis and for the purpose of identifying and preventing discriminatory behaviour towards and treatment of Roma in court, police and investigation proceedings, the project team drafted a set of recommendations aimed to promote the principle of protection against discrimination and promotion of the right to equality, presented below.

Possible discriminatory practices in the course of court proceedings related to the procedural position of Roma could be duly recognized and identified as part of efforts on immediate monitoring of court cases in which Roma appear as defendants or victims of criminal offences.

Efficient and effective investigations must be conducted into cases of illegal actions taken by law enforcement authorities. The state is obliged to ensure efficient protection against discrimination and must identify and eliminate all discriminatory behaviour on the part of law enforcement authorities, followed by establishment of responsibility by means of thorough and complete investigations.

The mechanism on access to justice must be improved, especially in terms of provision of legal aid in all types of proceedings, notably by awarding defence attorneys through the system of free legal aid and by providing interpretation in defendants' native language during court proceedings.

Relevant state authorities should establish a mechanism for identification of abuse of investigation powers on the part of law enforcement bodies.

In order to achieve efficient protection against discrimination in criminal proceedings, and especially in the course of police-led and prosecution-led investigations, the state needs to provide continuous education and training aimed at sensitization of law enforcement and judicial bodies when acting in cases in which Roma appear as defendants/suspects. These education and training efforts should target public prosecutors, police officers, social workers, and judges. Sensitization courses must be in line with the most recent trends and the standards on respect for the right to equality, with special focus on case-law of the European Court of Human Rights which provides the ultimate definition on protection against discrimination and respect for the right to equality.

# ANALYSIS

of the status of Roma as defendants in criminal proceedings in the Republic of Macedonia

Project:

“Equality in Judiciary, Security in Life”

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